

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 2ND JANUARY 2007 / 12TH POUSHA, 1928

Tr.P(Crl.).No. 59 of 2006()

AGAINST THE ORDER IN CC.1679/02 & 1945/03 IN
CC.872/2002 of J.M.F.C.-I, KOLLAM
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PETITIONER:

SINDHU BAI S.,
CHEMBAKAMANGALAM VEEDU,
KANTRAMKANI MURI, MANTROTHURUTH P.O.,
KOLLAM.

BY ADV. SRI.G.BHAGAVAT SINGH

RESPONDENTS:

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1. STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.
 2. BAIJU, S/O. LAKSHMANAN,
KAITHAVILAYIL VEEDU, (SOBHA SADANAM),
NADUVILAKKARA MURI, PADINJAREKALLADA P.O.,
KOLLAM DISTRICT.
 3. SALIM KUMAR E.,
S/O. BHASKARA, PLAVARAVAYALIL VEEDU,
KANTRAMKANI MURI, MANTROTHURUTH P.O.,
KOLLAM.
 4. SOBHA, W/O. SALIM,
PLAVARAVAYALIL VEEDU, KANTRAMKANI MURI,
MANTROTHURUTH P.O., KOLLAM.
- R1 BY PUBLIC PROSECUTOR SRI. K.A. AKBAR
SRI.P.A.NOOR MUHAMMED
SRI.C.K.PRASAD

THIS TRANSFER PETITION (CRIMINAL) HAVING BEEN FINALLY
HEARD ON 02/01/2007, THE COURT ON THE SAME DAY PASSED
THE FOLLOWING:

R. BASANT, J.

Tr. P.C. No. 59 of 2006

Dated this the 2nd day of January, 2007

ORDER

The petitioner, a woman, has come to this Court with this petition for transfer of three cases pending before the J.F.C.M. -I, Kollam to any court in Trivandrum in the interests of justice. Of the three cases, in two of them the petitioner is the defacto complainant. In the first one allegation was made that respondents 2 to 4, her husband and his relatives, are guilty of the offence punishable under Section 498A I.P.C. In the second it is alleged that the third respondent has committed offences punishable, inter alia, under Sections 452 and 506(ii) I.P.C. against the petitioner. The third is a private complaint filed by the 4th respondent, who is the wife of the third respondent, making allegations of culpable criminal conduct against the petitioner, her mother and her brother. All the cases are pending before the J.F.C.M. - I, Kollam. Trial in one of the cases has commenced. It is at that stage that the petitioner has come to this Court with this petition for transfer of the cases to any other court at Trivandrum.

2. In the course of the arguments, the learned counsel for the petitioner submits that the petitioner will be satisfied if the cases are transferred to any court other than courts at Kollam.

3. What are the reasons? The learned counsel raises two contentions. The first contention is that certain observations made by the learned Magistrate after the examination of the petitioner in the prosecution under Section 498A I.P.C. has instilled reasonable apprehension in her mind that she may not get justice at the hands of the Presiding Officer. It is said that the learned Magistrate expressed the opinion in open Court that the case was not likely to end in conviction. This is the first ground urged to justify the prayer for transfer.

4. Secondly it is contended that the petitioner has no relatives or influence at Kollam and she and her relatives are afraid to attend the court at Kollam as they apprehend danger at the hands of respondents 2 to 4, who are said to be very influential at Kollam. For these two grounds the learned counsel for the petitioner prays that transfer may be directed as prayed for.

5. The learned counsel for the respondents vehemently opposes the prayer for transfer. It is contended that all the parties are permanent residents of Kollam and there is absolutely no justification in the prayer for

transfer of the cases to any court outside Kollam District. The transparent intention is to vex and harass respondents 2 to 4, it is contended.

6. Report of the learned Magistrate was called for. The learned Magistrate submits that the dispute being a matrimonial one he has expressed the opinion that it will be better for the parties to settle the disputes. But the learned Magistrate hastens to add that he has not made any observation or comment about the merits of the cases of the rival contestants. The learned Magistrate reports that he has no objection against the cases being transferred, but asserts that the allegations are incorrect.

7. Having gone through the averments made in the complaint and the report of the learned Magistrate, I find no reason to accept the first ground and direct transfer of the cases to any other court of competent jurisdiction. In a case involving matrimonial disputes, any reasonably prudent, sensitive and compassionate mind is likely to suggest exploration of possibilities of a settlement. The reasons urged for such an apprehension and the alleged prejudice are totally and completely unacceptable. The prayer on the first ground has got to be rejected.

8. So far as the second contention is concerned, no specific allegation is raised in the application for transfer to indicate that there were

any threat or violence directed against the petitioner on any specific date. Of course, long after the filing of the transfer petition, Annex.A1, allegedly a copy of a complaint filed by the petitioner before the Superintendent of Police has been produced. There is nothing to show that the said complaint was actually handed over to the Superintendent of Police. Nay, it is more relevant to note that there is no specific allegation of any such incident as alleged in Annex.A1 in the transfer petition at all. In these circumstances, the alleged apprehension of physical violence and threat emanating from respondents 2 to 4 against the petitioner and her family members does not also inspire confidence.

9. The learned counsel for the respondents points out and the report of the learned Magistrate reveals clearly that trial has already commenced. I do not, in these circumstances, find any reason to direct transfer of the cases as prayed for.

10. This Transfer Petition is hence dismissed. The learned Magistrate shall proceed to dispose of the cases as expeditiously as possible.

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(R. BASANT)
Judge

